IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Crl.Rev.Pet.No. 720 of 2002()

CRA.48/1994 of SESSIONS COURT, MANJERI
CC.179/1991 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

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REVISION PETITIONER: 2ND APPELANT:2ND ACCUSED:

HARIDASAN @ DASAN,
S/O.AYYAPPAN, PADINHAREKKARA MUNNANTHODI,
CHELAKULAM, MELATTTUR AMSOM.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: RESPONDENTS:COMPLAINANT & STATE:

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1. SUB INSPECTOR OF POLICE, MELATTUR.

2. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.4268/2002 IN CRL.R.P.NO.720/2002

DISMISSED

6/11/2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.A.TO JUDGE

KSS

K.R.UDAYABHANU, J

Crl.R.P.No.720 of 2002

Dated this the 6th day of November, 2007

O R D E R

The revision petitioner is the second accused (A1 died during the pendency of the appeal) in C.C.No.179/91 in the file of Judicial First Class Magistrate Court-II, Perinthalmanna who stands convicted, as modified by the Sessions Judge, for the offence under Section 324 read with Section 34 IPC and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.2,000/- each and in default, to undergo simple imprisonment for two months each.

2. The prosecution case is that A1 and A2, father and son, attacked PW1 on 2.1.1991 at about 7.30 p.m. by the side of the Kandankulam pond at Melattur and stabbed him with chisels.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 7, Exts. P1 to P5 and MOs' 1 to 3.

4. PW1, the defacto complainant, who has testified as to the incident has stated that he had bid the right to catch fish in the pond of the Panchayath. The incident has taken place at

7.30 p.m. on the particular day. He has stated that the accused and their relatives used to catch fish without his knowledge, the right of which has been bid by him and he had questioned the accused about the same and it is on account of the above grouse that they attacked him. According to him, both the accused stabbed him with chisels which he has identified as MOs' 1 and 2. It was he who rendered the FIS i.e., Ext. P1 on the basis of which the crime was registered. No contradictions or omissions with respect to his previous statement has been brought out by the defence. PW2, the occurrence witness has supported the version of PW1. He has stated that seeing the incident he also cried aloud and when the neighbours reached there, the accused left the place. Nothing has been brought out in the cross examination of PW2 to disbelieve his version as such. PW6, the head constable, has proved Ext. P5 FIR. Ext. P5 statement of PW1 was recorded by him at District Hospital, Manjeri. PW7, the S.I. of Police, recovered MO3 chappel from the scene of occurrence. The injuries sustained which are noted in Ext. P4 wound certificate has been proved by PW5, the civil surgeon at the Government Hospital. The following are the injuries

sustained by PW1.

(i) incised wound of the upper part of the frontal region-vertical 5 c.m. X ½ cm. bone deep injuring the outer table of bone.

(ii) lacerated injury lower part of the nose involving whole skin and exposing the cartilage of nose.

(iii) lacerated injury in front of chest 4 cms. below the right collar bone 3 cms. X 2 cms. skin deep penetrating.

(iv) lacerated injury right side of chest mid axillary line 3 cms. x ½ cm. skin deep.

(v) incised wound of right fifth spale horizontally extending from mid stream to 5 cms. laterally.

(vi) incised wound of right gluteral region 5 cm. X 2 cms. bone deep injuring mussle, vessels and nerves.

(vii) incised wound of upper part of lateral aspect of left forearm near wrist 8 cms. X 4 cms.

(viii) incised wound of 4 cms. x 1 cm. just above the left wrist with transaction of left radial artery. Bleeding profusely.

(ix) incised wound inner aspect of the left wrist extending to the palm 2.5 cms. above the wrist extending to Web spale injuring muscles, tendons and nerves.

(x) incised injury right side of the back just above shoulder 3 x 1 cm.

5. PW5 has stated that the injuries can be caused with MOs' 1 and 2. I find that the evidence adduced in the matter with respect to the occurrence i.e., the version of PWs' 1 and 2 and the medical evidence clearly established the prosecution case. Of course, the Sessions Judge has altered the sentence to one under Section 324 IPC instead of 326 IPC in which the accused were convicted by the trial court. I find no reason to deviate from the findings of the lower appellate court. The conviction is confirmed.

6. Counsel for the revision petitioner has only pleaded for leniency pointing out that more than 17 years have elapsed since the date of the incident and that the commencement of the prosecution (date of the incident is 2.1.1991). It is also stated that the sole means of livelihood of the family of the revision petitioner is his income which is meagre.

7. In the circumstances, considering the long lapse of time, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.20,000/- to PW1 and in default, to undergo simple imprisonment for six months. The revision petitioner is granted four months' time to remit the

amount of compensation. He shall appear before the Judicial First Class Magistrate Court-II, Perinathalmanna on 6.3.2008 to receive sentence.

The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl